

International Union of Operating Engineers, Local 150, AFL-CIO (Harsco Corporation, Heckett Division) and Russell Goin and Douglas I. Pearson and John Szozda and Dan Hanewich and LTV Steel Company, Inc. and Harsco Corporation, Heckett Division. Cases 13-CB-13544, 13-CB-13547, 13-CB-13598-1-2-3, 13-CC-1810, and 13-CC-1811

February 17, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

The issue in these cases is whether the Respondent Union has engaged in conduct which violated Section 8(b)(1)(A) and Section 8(b)(4)(i) and (ii)(B) of the Act.

On January 22, 1993, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Parties, Heckett employees, filed answering briefs.

The National Labor Relations Board has considered the decision in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.³

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In the absence of exceptions, we adopt, *pro forma*, the judge's finding that the Respondent did not unlawfully maintain and invoke a confidentiality provision in its bylaws.

² We do not adopt the judge's finding that art. IX, sec. 7(i) is unlawful on its face. Rather, we would find that its application in this case, i.e., to employees of a neutral employer, was unlawful.

In adopting the finding that the Respondent Union violated Sec. 8(b)(4)(i) and (ii)(B) of the Act, we find it unnecessary to pass on whether the Union received notice of the reserved gate system from its picketing employees and picket captains, because the evidence establishes that one of the Respondent's strike weapons was to enmesh neutral employers in its dispute with Levy and that misuse of the gate system was a declared part of the Respondent's strategy.

³ We agree with the judge that member/employees should be reimbursed for expenses, if any, incurred in resisting the Respondent's attempts to unlawfully discipline them. The Respondent is required to make them whole for all legal and other expenses they may have incurred in defending against the retaliatory union charges and in preparing that defense. See *Laborers Northern California Council (Baker Co.)*, 275 NLRB 278 (1985). Interest shall be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent contends that the Charging Party individuals had no legal expenses which are properly included in this make-whole remedy. This issue was not litigated and is appropriately a matter to be determined at the compliance stage of this proceeding.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Union of Operating Engineers, Local 150, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Order.

Librado Arreola, Esq., for the General Counsel.

Dale D. Pierson, Esq., of Chicago, Illinois, for the Respondent.

William Bevan, Esq., of Pittsburgh, Pennsylvania, for Charging Party Harsco Corporation, Heckett Division.

Lawrence L. Summers, Esq., of Chicago, Illinois, for Charging Party LTV Steel Company, Inc.

Steven M. Maish and Patrick Mysliwy, Esqs., of Chicago, Illinois, for Individual Charging Parties.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. On October 15, 1991, the LTV Steel Company, Inc. (LTV Steel) filed a charge in Case 13-CC-1810 alleging that since October 12, 1991, the International Union of Operating Engineers, Local 150, AFL-CIO (Union or Respondent) engaged in picketing at the LTV Steel Indiana Harbor Works facility with the object of forcing or requiring others including LTV Steel to cease using, selling, handling, transporting, or otherwise dealing in the products and services of Edward C. Levy Company or to cease doing business with Edward C. Levy, in violation of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act (Act).

On October 17, 1991, Heckett Division of Harsco Corporation (Heckett) filed a charge in Case 13-CC-1811 alleging that since on or about October 14, 1991, the Union engaged in or induced or encouraged employees of Heckett and other persons engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any service and has threatened, coerced, and restrained Heckett and other persons engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Heckett to cease using, selling, handling, transporting, or otherwise dealing in the products of LTV Steel or to cease doing business with LTV Steel in order to force LTV Steel, a person engaged in commerce or in an industry affecting commerce, to cease doing business with, or to cease using, handling, transporting, or otherwise dealing in the products of Edward C. Levy Company, a person engaged in commerce or in an industry affecting commerce, in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

On October 17, 1991, Heckett filed a charge in Case 13-CB-13544 alleging that since on or about October 14, 1991, the Union has restrained and coerced employees of Heckett in the exercise of the rights guaranteed them in Section 7 of the Act, which violates Section 8(b)(1)(A) of the Act.

On October 18, 1991, Russell Goin filed a charge in Case 13-CB-13547 alleging that since on or about October 14,

1991, the Union has restrained and coerced its members in the exercise of their Section 7 rights by arbitrarily filing internal union charges against its members for refusing to engage in a sympathy strike, and attempting to cause the Employer (Heckett) to discriminate against the members, which violates Section 8(b)(1)(A) of the Act.

On December 4, 1991, Douglas Pearson, John Szozda, and Dan Hanewich filed charges in Cases 13-CB-13598-1, -2, and -3, respectively, alleging that since on or about October 14, 1991, the Union has restrained and coerced them and other employees of Heckett by bringing internal union charges against them and scheduling trials to impose discipline on them, which violates Section 8(b)(1)(A) of the Act.

On April 10, 1992, Russell Goin filed a first amended charge in Case 13-CB-13547 alleging that since on or about October 14, 1991, the Union has restrained and coerced its members, named in Appendix A, in the exercise of their Section 7 rights by arbitrarily filing internal union charges against its members for refusing to engage in a sympathy strike, and attempting to cause the Employer (Heckett) to discriminate against the members, which violates Section 8(b)(1)(A) of the Act.

On November 27, 1991, the Regional Director for Region 13 issued an order consolidating cases, consolidated complaint and notice of hearing in Cases 13-CB-13547, 13-CB-13544, 13-CC-1811, and 13-CC-1810 alleging that the Respondent violated Sections 8(b)(1)(A) and 8(b)(4)(i) and (ii)(B) of the Act. An amendment to the order was filed on the same date. On December 30, 1991, the Acting Regional Director for Region 13 issued a complaint and notice of hearing in Cases 13-CB-13598-1, -2, and -3 alleging that the Respondent violated Section 8(b)(1)(A) of the Act. On December 30, 1991, the Acting Regional Director for Region 13 also issued an order consolidating complaints in all of the captioned cases. Hearing was held in the above matters in Chicago, Illinois, on May 18, 19, and 20, 1992.

On May 19, 1992, counsel for the General Counsel moved to amend the complaint in three regards, which motions were allowed. The first alleges that the provisions found in article IX, section 7(i) and article XXI, section 1 of Respondent's bylaws are unlawful and violate Section 8(b)(4) and (1)(A) of the Act, respectively. The second alleges that Respondent promulgated a policy and distributed pamphlets to neutral employees which induced them to cease performing work.

Briefs were filed by the parties on or about July 10, 1992. Based on the entire record, including my observation of the demeanor of the witnesses and after consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

It is admitted, and I find, that at all times material to this proceeding, Harsco Corporation, Heckett Division, a corporation with an office and place of business in Whiting, Indiana, engaged in the business of metallic recovery, slag separation, and other specialized services and is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is admitted, and I find, that at all times material to this proceeding, LTV Steel Company, Inc., a corporation with an

office and place of business in East Chicago, Indiana, engaged in the manufacturing and processing of steel, and is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted, and I find, that the Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues for Determination*

The complaint, as amended, presents the following issues:

1. Whether Respondent engaged in unlawful secondary activity by bringing internal charges against members employed by a neutral employer, and thereby violated Sections 8(b)(1)(A) and 8(b)(4)(i)(B) of the Act.

2. Whether Respondent engaged in picketing at neutral gates in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

3. Whether Respondent promulgated an unlawful rule and disseminated the contents of that rule to neutral employees, thereby inducing neutral employees to cease working for their employers in violation of Section 8(b)(4)(i)(B) of the Act.

4. Whether Respondent's bylaw provision prohibiting members from working on a job where a strike is called is maintained in violation of Section 8(b)(4)(i)(B) of the Act.

5. Whether Respondent's bylaw provision regarding the confidentiality of its business is maintained in violation of Section 8(b)(1)(A) of the Act.

B. *The Facts Involved in the Dispute*

LTV Steel maintains a very large steelmaking facility in East Chicago, Indiana, known as the Indiana Harbor Works facility. The facility is spread over some 1150 acres and about 5000 workers are employed there. As pertinent, in the course of its operations, it has contracted with two separate and independent companies, The Edward C. Levy Company (Levy) and Harsco Corporation, Heckett Division (Heckett) to process and dispose of slag, a byproduct of the steelmaking process. The legal dispute involved arose from a strike by the Union against Levy which took place from October 12 until October 18, 1991. At no time relevant to this proceeding was the Union involved in a labor dispute with either LTV Steel or Heckett. During the strike, most of Heckett's employees, also members of the Union, crossed picket lines established by the Union and continued to work. As a result of their actions, the Union brought internal charges against them and was prepared to try them on these charges until these employees secured an injunction from a Federal district court.¹ As can be seen from the statement of

¹ On December 9, 1991, the Regional Director petitioned the United States District Court for the Northern District of Indiana for appropriate injunctive relief pursuant to Sec. 10(l) of the Act pending final disposition before the Board. After a hearing held on December 18 and 23, 1991, and January 14 and 15, 1992, the presiding district court judge issued an order enjoining Local 150 from engaging in proceedings to exact discipline and/or fines from Heckett's employees who crossed Local 150's picket line at LTV Steel and from engaging in certain conduct with respect to Heckett's employees where

the case and the issues framed by the complaint, the primary considerations are whether the Union engaged in lawful picketing at the LTV Steel facility during the strike, and whether its actions relative to Heckett employees thereafter were lawful.

Levy performs slag reclamation work from LTV Steel's blast furnaces. When iron is processed in the blast furnaces, the impurities or byproduct which is known as slag, is skimmed off the top of the furnace ladles and dumped on the ground. After the slag cools, Levy digs up the slag and hauls it in trucks to its work area on the LTV Steel premises where the slag is crushed and processed into finer material, which is then sold by Levy and transported off the LTV Steel site by Levy's trucking subsidiary, Indian Trucking.

Heckett has two contracts with LTV Steel, one to perform the slag reclamation work from the basic oxygen furnaces, and the other is a vehicle lease and maintenance contract. Heckett utilizes the following process in its slag operations: the slag is poured from the basic oxygen furnace into a ladle and transported by Heckett employees to the Heckett work area. After the slag cools it is processed in order to revert any metallic materials back to LTV Steel. The slag from the basic oxygen furnace has a higher metallic content than the slag which Levy processes. Heckett also has a second contract with LTV Steel known as the R.T.V. or slab carrier agreement. Under the terms of the slab carrier contract, LTV Steel leases four vehicles from Heckett to haul steel slabs around the facility. In addition to renting the vehicles to LTV Steel, Heckett also performs maintenance on them.

As noted, Heckett and Levy are competitors. Neither Heckett nor Levy perform any services for one another. Prior to Levy being awarded the contract to process the blast furnace slag, Vulcan Materials had the contract. Prior to this, Heckett had the contract. Heckett has not had a contract to process the LTV Steel blast furnace slag for about 10 years. Heckett bid unsuccessfully on the contract awarded to Levy. If the Levy slag operation were to be shut down for a long enough period of time, LTV Steel would be forced to stop its blast furnace operation. In this regard, Heckett has the necessary equipment and expertise to perform the Levy work. According to Heckett's facility superintendent, William Haas, during a 1983 strike against Heckett by the Union, some of its work was performed by a competitor using union employees. Heckett would have performed Levy's work if it had been given a contract from LTV Steel of at least 3 years' duration. However, LTV Steel did not ask Heckett to submit a bid for this work during the strike by the Union against Levy. There is no evidence that Heckett performed any of the Levy work at any time relevant to the instant dispute.²

the object is to pressure Heckett to cease doing business with LTV in order to pressure LTV to cease doing business with Levy. Local 150 has appealed this order to the United States Court of Appeals for the Seventh Circuit.

² According to some handwritten notes secured by Respondent pursuant to subpoena, "Bill Haas and Keith McCarthy [another official with Heckett] assured Hereda that they can man the mtce. operation for our RTV's, slag pots and digging pits. In addition, they can even supply Levy with people if Levy c/n meet their needs." Haas explained this note. Sometime in late August or early September, Haas had a meeting with Dave Hereda, LTV Steel's general manager of transportation. Hereda asked Haas if Heckett employees did not

Haas supervises about 75 hourly employees and is in charge of the overall operations of Heckett at the facility. Heckett and Respondent Union are parties to a collective-bargaining agreement which is effective by its terms from September 16, 1990, until September 30, 1995. The Respondent is the exclusive representative of all production and maintenance employees of Heckett at the LTV Steel facility.

Respondent is also the collective-bargaining representative of Levy's production and maintenance employees at the LTV Steel facility, and, as pertinent, their collective-bargaining agreement expired at the end of September 1991. Negotiations over a new contract between Levy and Respondent began in August or September 1991. The wage rates offered by Levy became a strike issue during negotiations and eventually a strike was called against Levy by Respondent. As noted above, the strike began October 12 and ended on October 18, 1991.

Prior to the strike, Heckett's employees became worried about what they would do in the event of a strike by Respondent against Levy. The Heckett contract contains a no-strike clause which reads: "There shall be no strikes, work stoppages, slowdown, interruption, or impeding of work during the period of this agreement. There shall be no lockouts during the period of this agreement."³ Many of these employees feared that they would lose their jobs in the event a strike occurred and they did not report for work. They expressed these concerns to their union representatives and received what at best can be termed a mixed message.

Timothy Scheub is a Heckett employee and a member of Respondent Union. He testified that about a week prior to the strike he spoke with Raymond Connors, the Respondent's current financial secretary and then slag industry business agent, telling him he had heard rumors that there would be a strike at Levy. Connors indicated that he did not think that there would be a strike.

cross a picket line what would he do. Haas responded that he would have the supervisors perform maintenance work on the slab carrier equipment. Haas added that Heckett would bring supervisors from its other facilities to man its own equipment. According to Haas, at no time did he offer to perform any work performed by Levy if Levy was struck. He told Hereda that Heckett could not do the work. The notes introduced by Respondent are dated October 12, 1991, and were taken by labor relations personnel of LTV Steel, either Dennis Fillippo, LTV Steel's manager of labor relations, or persons reporting to him. At the time of the introduction of these notes, at the end of the hearing, Fillippo had been excused from the hearing and was out of town and unable to return to the hearing to offer any testimony about the notes. These notes, in the absence of any other evidence that Heckett did anything with respect to performing Levy's work, including submitting a bid for the work or preparing to do the work, do not prove anything. I accept Haas' explanation of his contact with Hereda as fact.

³ Steve Cisco, Respondent's recording secretary and union negotiator for the last Heckett contract, offered some very unconvincing testimony that this clause did not prohibit sympathy strikes. Cisco did not negotiate the clause as it predates his participation in negotiation. The language of the clause appears to me to cover all strikes, and by not specifically excluding so-called sympathy strikes from its terms, includes them. There is no evidence that anyone involved in this proceeding other than Cisco believed that the Heckett no-strike provision excluded sympathy strikes or meant anything other than a plain reading of the provision would indicate. I find that Respondent has failed to prove that the involved no-strike provision excludes sympathy strikes. *Indianapolis Power Co.*, 291 NLRB 1039 (1988).

Terry Sherer is another Heckett employee and member of the Union who prior to the strike had a conversation with Connors. This conversation took place on October 10 on the jobsite when Connors and Respondent's organizer, Dave Fagan, approached a group of Heckett employees. The employees wanted to speak with the union officials because they were concerned about what the Union expected of them if Levy was struck and whether they would lose their jobs if they honored a picket line and did not report to work during the strike. According to Sherer, Connors told them that if there was a strike, a neutral gate would be established within 3 days. Connors told the employees that he was not telling them not to cross a picket line because that would constitute an illegal secondary boycott. Connors also said that he had an understanding with Heckett that its employees would be allowed to miss up to 3 days of work with no disciplinary action taken against them. Sherer later asked Heckett's superintendent, William Haas, about this understanding and was told that he had never discussed the matter with Connors. Haas corroborated that he had never told Respondent's officials that he had no objection to Heckett's employees missing work if Levy was struck.

Connors testified that he does not remember this conversation with Sherer though he did remember having a number of conversations with Heckett employees prior to the strike in which he told them that he did not believe that there would be a strike. This testimony is totally contradicted by Connors' actions at a union meeting held October 10, when the Union's chief negotiator with Levy told members that there would be a strike and Connors read the membership some rights of members during a strike. Connors denies telling Heckett employees anything about a secondary boycott. In a related court injunction proceeding, he indicated that he did not know if he used the words secondary boycott. He cannot remember being asked about what the Heckett employees should do if there was a strike or answering such a question. I find Connors to be an evasive witness with a very selective memory. As will be discussed in more detail, much of Connors' testimony was disingenuous and lacking in candor. Moreover, the witnesses who gave testimony which conflicted with that given by Connors appeared to be more truthful. I credit the testimony of Sherer over that of Connors with respect to their conversation. I also note that Dave Fagan testified and did not deny Sherer's testimony.

William DeGoey is an hourly employee of Heckett and union member. He has been employed by Heckett for about 25 years. He participated in a 1983 strike against Heckett, which lasted about 13 weeks. During this strike other union members not employed directly by Heckett continued working at the LTV Steel facility and evidently performed some of Heckett's work. About half of Heckett's present hourly employees were also employed by Heckett in 1983. Prior to the Levy strike, there was a rumor among the Heckett union employees to the effect that they were to honor the Levy picket lines or face serious trouble. DeGoey testified that during a strike by the Union at another steel plant the year before, all union members were told to strike, and some were permanently replaced. He was worried that if he honored the picket lines, he would be terminated by Heckett and permanently replaced.

DeGoey attended a union meeting on October 10, 1991, at the Union's office in Merrillville, Indiana. Steve Cisco, the

recording secretary of the Union, told the membership that Levy had made a 1950s' offer and that there would be a strike.⁴ Connors also addressed the membership. He read from a card that said there were five things to do if a member sees a picket line. These five things were:

Good Union members respect picket lines. A good union member is extremely careful when confronted with a picket line situation. When a picket line is established on a job where he is working:

1. He leaves. He does not talk—just leaves.
2. He reads the picket sign as he leaves.
3. He does not hang around near the job.
4. He knows that once a picket line is established, his Business Agents and other Union officials are legally gagged and handcuffed from giving advice pertaining to that job. They can only tell him if the Picket Line is authorized.
5. He does not allow himself to be drawn into conversation with anyone at the job site.

At the outset of the strike, several cards were left in the employees' locker room at Heckett wherein these five admonitions were listed and in addition, the cards listed four rights that a member has in a picket line situation.

A Good Union Member knows his rights:

- a. He has the right not to work behind any picket line.
- b. He has the right to decide for himself whether to walk off a job being picketed.
- c. He understands that his trade may be under attack next.
- d. He knows that a two gate system means a picket line and he has the right not to work, no matter how many gates the employer sets up.

This message had also been included in previously published articles by Cisco and Connors in a union newsletter and was admitted to be the union philosophy. The total message set out above will be referred to as Charging Party's Exhibit 1.

Randall Dobbs is a Heckett employee and a member of the Union. He was union steward at Heckett until relieved of those duties by Connors after the strike. He attended a regular meeting of stewards at the union hall on the morning of October 12. Connors told the stewards that the Levy employees had voted to strike, but that pickets would not go up until Monday. Connors told Dobbs to pass out the rights of members cards (C.P. Exh. 1) at the plant, giving Dobbs about 30 copies of the card. Dobbs testified that at the stewards meeting, one of the stewards told Connors that he would honor the Union's picket line until a safe gate was established.⁵ Dobbs went to the LTV Steel facility that morning and passed out some of the cards to members and left the remainder of the cards in the Heckett locker room.

⁴ Cisco testified and did not deny DeGoey's testimony.

⁵ Dobbs also testified without contradiction that Connors had previously told him, "God help the man that crosses our picket line," and that Dobbs could be fined up to \$5000 for crossing the Union's picket line.

Many of the Heckett employees reported for work on Saturday, October 12, 1991, some hours before the strike began. Timothy Scheub was one such employee. At lunchtime, he spoke with Union Steward Bill Byers. Byers told him and some other employees that the Union was putting pickets up and that the employees could finish their shift and then leave or be considered as working across the line. Scheub commented that he heard that there was supposed to be a safe gate set up, and Byers said that he thought that Cisco was working on it and it should be in place by Monday or Tuesday.⁶ This was important to Scheub because of the no-strike clause in the Heckett contract. He was fearful of losing his job if he honored the picket line. Scheub testified that a number of Heckett employees had discussed this prior to the strike and believed that Heckett would fire them if they failed to report for work during the strike.

Russell Goin is a Heckett employee and union member. He was working on the morning the strike started, and there were no pickets when he reported to work. He was told of the strike that day by Steward Byers. In response to Goin's question about what he should do, Byers could not tell him whether or not to cross the picket line, but to do what he thought was right. Byers also said that he had planned on missing a day or two of work because it would take a couple of days to establish a safe gate.⁷ Based on this comment, Goin assumed the Union was working on setting up a safe gate.

Connors offered testimony about the strike's inception. He testified that about a week and a half before the strike, he spoke with some Heckett management officials and some members and said he did not believe there would be a strike. He cannot remember speaking with Heckett employees prior to the strike about what they should do in case of a strike against Levy. He cannot remember what he said about the possibility of a strike at the October 10 union meeting though he was there and spoke. He testified that he learned that a strike would occur when a vote of the Levy employees was taken on the morning the strike began. He did not suspect a strike would take place prior to the vote. Again, because of the vagueness of Connors' testimony, his loss of memory on a number of important points, and his general evasiveness, I do not credit his testimony when it conflicts with that of other witnesses.

After the vote had been taken, Connors had the member employees of Levy get together and designated which members would go to which LTV Steel gate. There are three entrances to the LTV Steel facility, designated as the East Bridge gate, the West Bridge gate, and the Burma Road gate. Connors sent pickets to each of these three entrances. The East Bridge gate and West Bridge gate are the entrances normally used for access to the facility by employees and vendors, with the West Bridge gate being the entrance used by Heckett employees. The Burma Road gate is used only as an entrance to the facility for primary employers in strike situations and had been last used for this purpose in 1986, and before that in 1983.⁸ In 1983, this entrance was used as re-

serve gate for Heckett in a strike by Respondent Union against Heckett. During that strike, the Union confined its picketing to this entrance only.⁹

Later that day, he personally visited the pickets at each of the gates, the East and West Bridge gates and the Burma Road gate. He was unable to remember which members were at which gate. He denied designating a picket captain, saying that he performed that duty. He testified that he did not ask any of the picketers if they were aware of a reserved gate system.

Connors testified that at the outset of the strike, he and some of the picketers approached the East Bridge gate entrance and were told by LTV Steel plant security to picket at the intersection of Riley and Dickey Road, a public intersection just off LTV Steel property and a point some distance from the LTV Steel East Bridge gate entrance. This is a point at which the steel haulers union had picketed in an earlier strike. He testified that no plant security personnel told him in this contact that the Union should picket at the Burma Road gate entrance. However, General Counsel presented the testimony of the only LTV Steel security personnel on duty at the East Bridge gate entrance during the timeframe Connors identified as being the time he received the

⁹ According to the testimony, the so-called Burma Road and the Burma Road gate are reached by a public road named Front Street. Front Street leads to a public park called Whiting Park, to an entrance to Burma Road belonging to the Amoco Oil Company and a public point where Burma Road ends. Front Street ends at Whiting Park and there are no businesses in that area besides Amoco Oil. Whiting Park is a public park which is adjacent to Lake Michigan and Amoco Oil and it affords picnicking, swimming, and fishing to the public. The Amoco Oil entrance is a paved road with a gate which is closed most of the time, and a road on the Amoco property runs alongside Burma Road. Suppliers and contractors of Amoco Oil use this entrance and the connecting road. There is a sign posted on the Amoco Oil gate depicting the property as belonging to Amoco Oil. Also at the time of the strike in question, there was a sign which read, "Amoco Employees Only," which is presently not posted at the gate. These signs relate only to the Amoco Oil gate and paved road. To the right of the Amoco gate is the entrance to Burma Road, which is public property. Burma Road is a gravel road where it intersects with Front Street, and then about 150 to 200 yards past the intersection it is paved. The unpaved section of Burma Road at the outset of the strike was overgrown with weeds and Burma Road was difficult to make out. As the strike progressed, truck traffic generated by Levy made it obvious. To the right of Burma Road is property belonging to EJE, which contains railroad tracks running along Burma Road, so that Burma Road lies between the Amoco Oil gate and the EJE property. The Burma Road entrance on Front Street usually has a pole across it to keep children from going down it because there is a lake front park adjacent to Burma Road near the LTV Steel property. Burma Road curves around Amoco property, and immediately before the LTV Steel entrance is a lake front park with access to Lake Michigan. That park is used by the public for fishing, swimming, and picnicking during the summertime. Public traffic in the vicinity of Burma Road, except for times when the parks are in use, is relatively light compared with public traffic near the East and West Bridge gates of LTV Steel. During the strike, the Union confined its picketing to the entrance of Burma Road on Front Street. As its picketers would not have had to trespass on private property to reach the LTV Steel gate abutting the Burma Road, there was no reason why picketing could not have taken place at the gate itself. Indeed in the 1983 strike against Heckett, the Respondent Union picketed at the gate itself as well as at the Front Street entrance to Burma Road.

⁶ Byers did not testify and thus this testimony by Scheub is uncontradicted.

⁷ This testimony is uncontradicted.

⁸ There is conflicting testimony whether the gate was last used in 1986 or 1990. Whether it was so used in 1 of those 2 years or the other is immaterial.

direction from plant security. Two of these security personnel, Mario Castillo and Alfonzo Best, testified credibly that they had no contact with any of the picketers on October 12. A third security employee, Arliss Ray Aaron, a sergeant in the LTV Steel security department, testified that on October 12, he was instructed by management to tell any picketers who showed up that they would have to go to the Burma Road entrance to picket. On October 12, he approached four picketers at the LTV Steel property line nearest the East gate entrance and informed them that they would have to picket at the Burma Road location. He was one-tenth of a mile from the East gate entrance when he contacted these picketers. After he had given his instructions, the picketers left in the direction of the West gate entrance. I credit the testimony of Sergeant Aaron, as well as the testimony of Castillo and Best. Thus, if Connors was given any instructions on October 12, near the East Bridge gate, as he testified he was, it was the instructions given by Aaron to picket at the Burma Road gate. Connors testimony about this contact with LTV Steel security personnel is vague, as was most of his testimony, whereas Sergeant Aaron's testimony was clear and consistent with all the other actions LTV Steel took on October 12 with respect to the establishment of a reserve gate for Levy.

Connors also testified that on the afternoon of October 12, while he was in the vicinity of the East Bridge gate, he did not look to see if any signs establishing a reserve gate system had been posted at the guard post. He testified that it was possible that such a sign had been posted, but he just did not see it.

During the strike, Connors remembers having contact with LTV Steel security personnel on two other occasions. The first of these occurred when he went onto LTV Steel property to bring back a picketer who was talking with a truck driver in an LTV Steel parking lot in the vicinity of the West Bridge gate entrance. A security person in an LTV Steel security vehicle told him that he would have to leave the LTV Steel property. He said he would and did. According to Connors, this incident occurred on the second or third day of the strike early in the morning. He had another encounter with this security person at the intersection of Riley and Dickey Roads and was told by the security person to keep moving.

Connors denies ever observing a reserved gate sign during the strike. He denies being informed of the reserve gate set up by anyone from LTV Steel or Heckett or Levy.¹⁰ On the other hand, he never asked anyone, including the picketers, whether there was such a system in place.

Dennis Fillippo, manager of labor relations for LTV Steel at its Indiana Harbor facility, testified that he, on October 12, in the company of LTV Steel's regional manager for security, Thomas McQuaide, visited the three gates between 3 and 4 p.m. The purpose of the visit was to make sure that the signs that LTV Steel had erected at the gates were up. At the East Bridge gate, there was a sign posted at the guard shanty. The sign said:

This gate reserved solely and exclusively for the use of LTV Steel Company, its employees, its suppliers, its

delivery men, its outside contractors and all others having business with LTV Steel Company except employees of Levy, its suppliers, its delivery men and all others having business with Levy. All of Levy's employees, their suppliers, their delivery men, their subcontractors and all others having business with Levy may not use this gate under any circumstances. They must use the Burma Road gate which has been reserved solely and exclusively for Levy's employees, their suppliers, their delivery men, their subcontractors and all others having business with Levy.

These signs were erected at the East and West Bridge gates and were about 3 feet by 4 feet in size. The lettering was about an inch and a half high. These signs were visible from the picketers' locations, but the wording would not be legible.

At the Burma Road gate, LTV Steel posted a sign on October 12, which reads:

All of Levy's employees, their suppliers, their delivery men, their subcontractors and all others having business with Levy, may not use the East Bridge or West Bridge under any circumstances. They must use this gate. The East Bridge and West Bridge gates are reserved solely and exclusively for the use of LTV Steel Company, its employees, its suppliers, its delivery men, its outside contractors and all others having business with LTV Steel Company except Levy's employees, their suppliers, their delivery men and all other having business with Levy.

In the area of the West Bridge gate, Fillippo observed seven pickets. They were standing on traffic islands about 300 feet from the West Bridge gate. He and McQuaide approached the pickets and one of them identified himself as the picket captain. Fillippo told him that LTV Steel had posted signs reserving the East and West Bridge gates for LTV Steel employees and that a Levy gate had been set up at the Burma Road entrance to the facility. The picket captain stated that the union business agent, Connors, had instructed the pickets to picket all three entrances as their intent was to impact not only Levy employees, but Heckett employees and other employees at the facility. Fillippo replied that LTV Steel expected the pickets to picket only at the Burma Road entrance and would take what legal action it had to. This conversation took place within 3 or 4 feet of the other pickets.¹¹

Fillippo and McQuaide then went to the East Bridge gate, where they saw seven more pickets about four-tenths of a mile from the gate. They approached the pickets and asked who was in charge. One of the pickets responded that the picket captain was at the West Bridge gate. Fillippo told the pickets that the Burma Road gate had been reserved for picketing and that signs to that effect had been posted at each entrance. He said that he expected the picketing to be confined to the Burma Road location. The pickets said they were picketing pursuant to instructions from their picket captain.

¹⁰ Fillippo testified that Levy's management personnel told him that they had informed the Union of the reserve gate system. For this reason and others given below, he did not send notice of the system to the Union.

¹¹ I believe and credit Fillippo's testimony. It was corroborated by McQuaide and no persons who engaged in picketing at the West Bridge gate or any other LTV Steel entrance on October 12 offered testimony.

This conversation took place with all seven pickets within hearing distance.

McQuaide and Fillippo then went to the Burma Road location where they found two pickets about a mile from that facility entrance very near the point where Burma Road enters Front Street. At this point there is a paved entrance with a gate maintained by the Amoco company. At the time of this encounter, the public, gravel road that parallels Amoco Oil's paved road, was overgrown and its use barred by a pole that laid across it. The pole was removed after their visit. Fillippo spoke with the picketers and told them they were picketing on Amoco Oil property and should move to the other side of the road. He and McQuaide then drove about a mile down Burma Road to the Burma Road gate where they found the reserve gate sign in place. As noted above, the Burma Road entrance is used only for strike situations and had been last used for this purpose in 1986 and before that in 1983. The 1983 strike was one in which Respondent struck Heckett for a period of 13 weeks. During that strike, the Union confined its picketing to the Burma Road entrance, picketing at both the Front Street entrance to Burma Road and at the Burma Road gate itself. There is nothing that would have prevented the picketers in the instant strike from also picketing at the Burma Road gate, rather than just at the Front Street entrance to the Burma Road. Fillippo indicated that he did not call the Union's officials about the reserve gate set up because the Union had already established pickets at the Burma Road location, which, as noted, is used only as a reserve gate for primary employers in strike situations.

Respondent's organizer, Dave Fagan, was involved in coordinating the pickets during the strike. He was first present at the strike site on October 13, and remained there until the strike ended on October 18. Although he submitted photos to establish that the entrance to Burma Road did not appear to be an entrance to the facility because the road was obscured by overgrowth, he testified that he was told by pickets that Levy's trucks were using this entrance and in fact, saw them himself. No one told him during the strike about a reserve gate system at the LTV Steel facility and he denied ever seeing the reserved gate signs. He testified that he did not try to find out if there was a reserved gate system from anyone with LTV Steel; however, he testified that he may have asked the picketers, but could not positively recall whether he did or not.

With respect to the issue of whether the Union had notice of the reserved gate system established by LTV Steel, I find that the record best supports the following factual conclusions. LTV Steel did not give written notice of the system to Respondent, nor did any of its officials call any union officials and notify them of the establishment of the system. The signs it posted giving notice of the system were visible to picketers and Connors on at least several occasions, though the wording may not have been legible.

On the other hand, it seems clear to me that Respondent had no intention of honoring a reserve gate system during the Levy strike. As found above, the employees of Heckett believed that such system would be established as it had been in a previous strike by the Union at the LTV Steel facility, and Respondent's steward Byers confirmed that the Union was working on such a system. LTV Steel, through Fillippo and McQuaide, specifically informed the picketers, including a picket captain whom I find existed even given Connors'

denial, that such a system was in place and that picketing should be confined to the Burma Road gate. This picket captain responded to the information from Fillippo by saying that Connors had specifically instructed them to picket all gates as their intent was to impact not only Levy employees but also Heckett employees, ironworkers, and other employees.¹²

Sergeant Aaron of LTV Steel security also informed picketers, most likely including Connors, on October 12, that picketing should be confined to the Burma Road gate. I cannot be absolutely certain that Connors was among these picketers as Aaron did not identify him as one of the persons to whom he gave directions. However, all of the other evidence points to the conclusion that this was the person that Connors testified gave him instructions on where to picket. In any event, whether or not Connors was among this group of picketers, this is yet another clear instruction given to pickets to confine their picketing to the Burma Road location. All of the Heckett employees were aware of the reserve gate system, yet Respondent's officials would not speak to them during the strike. All of Levy's business during the strike was conducted through the Burma Road gate and this fact was known to the Union. Therefore, virtually all the affected members of Respondent, both Levy employees and Heckett employees, knew that a reserve gate system had been established, yet Respondent's officials closed their eyes and ears to this aspect of the strike and refused to accept the obvious fact of the reserved gate system. Connors and Dave Fagan were at the picket line on a regular basis throughout the strike, but Connors denies and Fagan could not remember being told by anyone that a reserve gate system was in place. I do not believe their testimony. If it is true it is only because they refused to let anyone tell them about it. It defies common sense that picketers are told by LTV Steel officials to move to another gate and refuse to do so without discussing the matter with their union representatives. Respondent's officials' refusal to hear about the reserve gate system is borne out by Heckett employees who tried to contact Connors during the strike.

Raymond Williams is a Heckett employee and member of the Union. He received charges from the Union about his crossing the picket line during the course of the strike. He called the union hall and spoke with Connors. Connors told him he had lost his job and hung up on him. Connors testified that he did not remember speaking with Williams after the strike and denies telling any member that he would lose his job. I credit Williams' testimony as it is consistent with events that followed and Connors proved to be less than a credible witness.

On or about October 14, 1991, Respondent, through Connors, filed internal union charges against 53 of its members employed by Heckett and charged them with the following violations:

It is my understanding that the member of this Union identified below has refused to honor the picket line and has worked at LTV Steel on various occasions

¹² Although Respondent suggests that LTV Steel personnel fabricated this conversation, a talk by Steve Cisco given to the union membership on November 14, 1991, strongly supports both the truthfulness of the conversation as well as the proposition that the Respondent's intent was to impact Heckett and LTV Steel.

since the picketing began. Working on a job when a strike is called or refusing to come off a job when notified to do so by a business representative is specifically prohibited by Article IX, Section 7(i) of the by-laws of Local 150, I.U.O.E. Such conduct is also a violation of Article IX, Sections 6(A)(C)(E)(H) as well as Article 7(J).

The members so charged are listed in Appendix A, attached to this decision. All the members were notified of the charges by Cisco during the strike or immediately following the strike. On November 22, 1991, William Dugan, president and business manager of Respondent, notified the charged members of their trial which was scheduled for December 12, 1991, at the Respondent's District 7 office in Merrillville, Indiana. When the Heckett employees did not honor Respondent's picket line during the Levy strike, Connors considered them to be in violation of Respondent's philosophy behind Charging Party's Exhibit 1 and Respondent's bylaws.

The provisions of the bylaws referred to in the letter from Connors are set out below:

Article IX. Rights, Responsibilities and Obligations of Each Member.

Section 6. General Responsibilities and Obligations—Every Member of this Local Union shall have the following responsibilities and obligations and, in consideration of the benefits of membership, agrees as follows:

(a) that he will not violate the international Constitution, these By-Laws and any other laws, rules, the obligation or ritual and the decisions, rulings, orders and directions of the International Union, this organization, and the trade rules in the locality in which the member works;

(c) that he will not abuse any officer or representative, foster secession or dissension among the membership or conduct himself in a manner unbecoming a member of this organization, or in a fashion detrimental to its good and the welfare or the good and welfare of its membership;

(e) that he will not interfere with the elected officers or business representative in the performance of their legally constituted duties;

(h) he shall acquire, read, have knowledge of and abide by the Constitution of the International Union and By-Laws of this Local;

Section 7. Specific Prohibited Acts—In accordance with the provisions of Section 6 of this Article, no member shall commit any of the following acts:

(i) Work on a job where a strike is called or refuse to come off when notified by the authorized Business Representative of Officers of the Local Union.

(j) Create dissension among the members or seek to destroy the interest and harmony of this organization.

Randall Dobbs was removed from his steward position after the strike by Connors. According to Connors, he was removed because he crossed the picket line during the strike as well as a general dissatisfaction with his performance of

his steward duties. In this regard, Connors testified that Dobbs initiated grievances when he should have first consulted with Connors or other union officials. He said that Dobbs' conduct was inconsistent with the good working relationship the Union had with Heckett officials. The person Connors selected to replace Dobbs did not cross the picket line. Prior to Dobbs' termination as steward, he had not been told by anyone from the Union that there existed a possibility that he might be removed from his position. About 4 or 5 months prior to the strike, another Heckett steward, Bill Byers, complained that he was going over Connors' head by filing grievances. Connors did not speak to him about this and Connors gave him no reason when he fired him. Dobbs tried to call Connors during the strike, but Connors would not make himself available.

Timothy Scheub, in the week following the strike, spoke with Jim Daniels, a member of the Union's advisory board. Daniels told him that he was in a lot of trouble for crossing the picket line and was going to be fined \$5000 and have his union membership revoked. Russell Goin received charges from the Union on October 15. In December, he met with Union Business Agent Bill Jansma. Jansma "chewed our butt and told us that he thought we had done wrong." He tried to get the Heckett employees to sign a paper indicating that they would not file a suit or go to the NLRB. Jansma then vaguely threatened Goin's wife and children, and the conversation ended. William Lippincott is a Heckett employee and member of the Union. On October 28, after earlier receiving charges from the Union, he went to the union hall to get a copy of the Union's bylaws. He there met Delbert Watson, the dispatcher for the Union, who gave him a copy of the bylaws. While at the hall, he overheard Watson tell some other members that "when everything hit the fan that he would be having a lot of orders for people out at Plant 7 [Heckett]."

This testimony, which I accept as fact, indicates to me that the Union not only intended to fine the Heckett member/employees who crossed the picket line, but cost them their jobs with Heckett as well.

There was a union meeting held on November 14, 1991. At this meeting, Steve Cisco spoke, and inter alia, stated:

That strike, Ray mentioned it earlier, that the final offer given by Levy was a pretty shitty offer. And we did go on strike as of rightfully. It was a strategically planned strike. It was done on Saturday, Saturday before Columbus Day, a federal holiday, where they couldn't get a court injunction against us for our pickets to stay out and we could get this thing resolved. My personal belief that these guys would not have crossed that picket line, by Sunday that strike would have been over. That strike lingered on until the following Friday, when it was resolved. Other people, lot of tradesmen, lot of guys you know that got rules, guys at Bailey Town, guys all working for Reith Riley in South Bend, Boston and Schererville, guys at Amoco, guys working for other companies, because of the gates, they [sic] way the gates were set up lost a days wages, a couple of days wages. Some guys lost a week. And this could have all been resolved if everybody would have honored that picket line. That strike would have been broken by the weekend. But it lasted a week. We will be

in lawsuits. We will be sued. We had to shut Bethlehem down. We had told Bethlehem we shut, we went for Indian Trucking, which went into Bethlehem. We will be involved in lawsuits. It will cost this local a lot of money for what forty-nine, or fifty-three people did, when it was an easy strike and should have been resolved in a couple hours. That is all I have to say. I will be here next month to testify, as Ray will, and bring the rest of the charges forward on that.

Although I rely on the evidence set forth earlier in reaching my conclusion that the Union had notice of the reserve gate system and chose to ignore it in furtherance of its unlawful secondary object, this speech by Cisco certainly supports this finding and conclusion. It strongly states that the Union strategically planned to picket all the LTV Steel gates in the obvious hope that if its picket lines were honored by its members and other unions, the facility would have been virtually shut down and the strike won quickly.

Another union meeting was held December 12, 1991, where the trials of the Charging Parties were to take place. However, an injunction from the Federal court had been secured and thus the trials were not held.

C. Were Heckett and LTV Steel Neutral Employers?

It is undisputed that the only labor dispute involved in the October 1991 strike was between the Respondent Union and Levy. However, Respondent on brief argues that Heckett could be construed as an "ally" of Levy, thus casting into doubt Heckett's position as a neutral employer, citing *Operating Engineers Local 459 (Royal Typewriter)*, 111 NLRB 317 (1955), enf. denied 228 F.2d 553 (2d Cir. 1955). An employer may become an ally to the primary employer either because the former undertakes to perform struck work on behalf of the primary employer or because of the relationship between two employers, their interests are said to be allied in interest, i.e., they are a single employer or they constitute a straight line operation. Here, there is no evidence whatsoever to support the proposition that Levy and Heckett are in any way commonly owned, commonly controlled, integrated in any way, or in any way dependent on one another. To the contrary, the evidence establishes that the two employers are independent, serious competitors of one another.

Respondent apparently relies on the fact that Heckett has the experience, skill, and equipment on site to perform the Levy work to support its "ally" theory. In addition to having the ability to perform such work, Respondent points to the fact that Heckett employees had lost work to other Local 150 members during a 1983 strike which lasted 13 weeks. It also relies on some notes made by unidentified LTV personnel at the outset of the strike as indicating that there was a real possibility that Heckett might have performed the Levy work if the strike had lasted longer. In pertinent part, these notes, based on a report from Dan Hereda, LTV Steel's manager of transportation, to Fillippo, indicate that Heckett will continue to perform under its equipment lease and maintenance contract and, "In addition, they can even supply Levy with people if Levy c/n (cannot) meet their needs." As noted earlier, Heckett's superintendent, Haas, testified that he spoke with Hereda in August or September and assured him that Heckett would honor its equipment lease and maintenance agreement with LTV Steel in the event Heckett employees

did not cross a picket line. He denied that Heckett volunteered to provide Levy with people or to in any way perform Levy's work. I have heretofore credited Haas' testimony in this regard.

Aside from the notes mentioned above, virtually unexplained in the record except for Haas' testimony, there is no evidence to support a finding that Heckett can be construed as an "ally" of Levy, and to the contrary, all other evidence supports the proposition that Heckett was a neutral employer. Respondent did not become aware of the notes relied on until the hearing on this dispute. There is no evidence that Heckett performed any of the Levy work during the strike, and even Connors acknowledges that he knows of no Levy work performed by Heckett. There is no evidence that any efforts were made by Heckett to prepare to perform work for Levy. Though Respondent notes that Heckett's work was performed by Local 150 members employed by another employer in a 1983 strike by the Union against Heckett, there is no showing that Heckett has ever undertaken to use its employees to perform the work of another struck employer. Given the total absence of any probative evidence to support Respondent's assertion that Levy and Heckett were "allies," I find that as a matter of fact and law, Heckett was a neutral employer in the dispute between Respondent and Levy and was not involved in or concerned with the dispute.

Respondent makes no contention that LTV Steel was not a neutral employer in the dispute and I find that under the tests formulated to decide whether one employer is allied with another and thus loses its neutral position, LTV is not an "ally" of Levy.

Certain forms of secondary activity, including secondary picketing conducted by a union, constitute unfair labor practices within the meaning of Section 8(b)(4)(B) of the Act. Secondary activity occurs when a union applies economic pressure to a neutral employer (such as I have found Heckett and LTV Steel to be in the instant case) to force the neutral employer to cease doing business with, and thereby increase the pressure on, the employer with whom the union does have a labor dispute. *NLRB v. Operating Engineers Local 825*, 400 U.S. 297 (1971).

The language of Section 8(b)(4) is clear that if an object of the union's conduct is unlawful under that section of the Act, the Act has been violated; it is immaterial that the union may have other legitimate objectives. *NLRB v. Enterprise Assn. of Steam Pipefitters Local 638*, 429 U.S. 507 (1977). To avoid violating Section 8(b)(4)(B) of the Act, picketing at a site where both the primary and secondary employees are working must be "engaged in so as to have as little impact on neutral employers and employees as possible." *Teamsters (Ready Mixed Concrete)*, 200 NLRB 253 (1972); *Retail Clerks Local 1017 (Crystal Palace)*, 116 NLRB 856 (1956), enf. 249 F.2d 591 (9th Cir. 1957). A reserved gate system is a "method by which secondary [neutral] employers may restrict the situs of a dispute with the primary employer to a particular area or areas" in order to minimize the impact of such picketing on neutral employers. *Iron Workers Local 433 v. NLRB*, 598 F.2d 1154 (9th Cir. 1979). ("The Supreme Court has authorized employers at a common situs [a site where both primary and secondary employers are working] to set up separate gates through which the primary employees and secondary employees may enter. By maintaining a separate gate for access to the site, the employees, suppliers

and delivery men of neutral employers operating at a common situs, thus, can be insulated from disputes involving other [primary] employers at the site, in that pickets can operate only at the gate of the employer with whom they have a grievance.”) Id.

In *Sailors Union (Moore Dry Dock)*, 92 NLRB 547 (1950), the Board established standards for evaluating the legality of common situs picketing.¹³ *Moore Dry Dock* set forth four criteria that a union must meet in common situs picketing situations: (1) the picketing must be strictly limited to times when the situs of the dispute is located on the secondary employer’s premises; (2) the primary employer must be engaged in its normal business at the situs; (3) the picketing is limited to places reasonably close to the location of the situs; and (4) the picketing discloses clearly that the dispute is with the primary employer. Failure to comply with any one of the *Moore Dry Dock* criteria creates a presumption that the picketing is for an unlawful secondary purpose and therefore violates Section 8(b)(4)(B) of the Act. *Electrical Workers IBEW Local 332 (W.S.B. Electric)*, 269 NLRB 417 (1984); *Landgrebe Motor Transportation v. Machinists District 72*, 763 F.2d 241 (7th Cir. 1985). “Picketing of [clearly established and properly maintained neutral] gates [is] plainly aimed at inducing strike action by employees of [neutral employers] with whom [the union] has no dispute, and therefore violates Section 8(b)(4)(i)(ii)(B) of the Act.” *Nashville Building Trades Council (Markwell & Hartz)*, 164 NLRB 280 (1967). Thus, the picketing of neutral reserved gates is clear evidence of secondary object; it constitutes noncompliance with the third *Moore Dry Dock* requirement that picketing be limited to places reasonably close to the situs of the dispute.

In the instant case, the Respondent Union chose to picket all three gates to the LTV Steel facility, contending that LTV Steel failed to establish a valid reserve gate system because it failed to give the Union proper notice of the establishment of such a system. In support of this contention, it correctly points out that LTV Steel, or for that matter, Heckett or Levy, did not send any written notice to the Union about the establishment of a reserve gate system nor did they telephone any union official and inform them of the establishment of such a system. It correctly points out that the signs posted at the East and West Bridge gates guardhouses were too far

from the picketers’ locations to be read.¹⁴ Further, in this regard, it notes that its picketers were instructed on more than one occasion not to enter onto LTV Steel property by LTV Steel security personnel. As the East and West Bridge gates are a reasonable distance inside the LTV Steel property lines, the picketers were unable to get close enough to the guardhouses to read the signs.

Were this the only evidence on the subject of notice of the establishment of the reserve gate system, I would agree with the Union that insufficient notice had been given by LTV Steel. However, there is substantial evidence that proper notice was given and the Union chose to ignore it and I so find. I have heretofore found that Fillippo and McQuaide, on October 12, 1991, told picketers at both their East and West Bridge gate picket sites that there was a reserve gate system in effect and that the Burma Road gate had been reserved for Levy and picketing against Levy. Sergeant Aaron of LTV Steel security told a group of picketers the same thing at the outset of the strike. Connors was at the picket line on October 12 and thereafter. Fagan was on the picket line on October 13 and thereafter. Both were monitoring the picket line activity and talking with the picketers. It is disingenuous for them to suggest that the only topic not discussed was the establishment of a reserve gate system. As noted earlier, Fagan did not deny such discussions, he simply could not remember them. I believe and find that the notice given by Fillippo and McQuaide to the picketers and to the individual identified as the picket captain constitutes sufficient notice of the establishment of the reserve gate system, especially in light of the past history of the use of reserve gates during labor disputes at the LTV Steel facility. In a previous strike by this Union at the LTV Steel facility in 1983, a reserve gate system had been established with the Burma Road gate being reserved for the primary employer and the Union had confined its picketing to that location. Thus, there was a past history of using the Burma Road gate as the reserve gate for primary employers and the Union knew it. Indeed, it sent pickets to this location at the outset of the strike even though the gate is used only in strike situations.¹⁵ In the earlier strike, the

¹⁴ On the other hand, the signs themselves were visible to the picketers, as demonstrated by a photograph taken by Fagan from the picketers’ location.

¹⁵ Though not contended on brief, much evidence was adduced at the hearing by Respondent to support an argument that the Burma Road gate was improperly established because its location prevents Respondent from effectively communicating its message to members of the public. There is no question but that picketing at the Burma Road gate would have preserved the right of the Union to bring pressure on the Employer in the primary labor dispute and shield neutrals from pressures in a dispute not their own. Picketing at any of the other gates, as the Union did, would necessarily enmesh neutral employers in the dispute. In a recent case, *Electrical Workers IBEW Local 970 (Interox America)*, 306 NLRB 54 (1992), the Board held that “As a general rule, a reserved primary gate on a public road is not improperly established simply because there is little traffic by the general public at that gate.” In that case, the reserved gate was in such a location that virtually no member of the public would receive the message conveyed by the union’s picketing. Even in this extreme case, the Board held, “the Respondent’s interest in communicating its message to the passing public must yield to the attainment of the Congressional objective of shielding neutral employers and their employees from enmeshment in the Respondent’s dispute with primary employers. This is particularly so in this

¹³ Though not urged on brief, Respondent may contend on exceptions that the *Moore Dry Dock* principles do not apply to its picketing, based on the argument that the removal of slag is an integral part of the steelmaking process, and that the common situs picketing which was conducted by Respondent in this case should be evaluated under the related work test articulated by the Supreme Court in *Electrical Workers UE Local 761 (General Electric) v. NLRB*, 366 U.S. 667 (1961). Regardless of whatever the merits of this argument would be if LTV Steel were the struck employer, it is clear that this so-called “reverse GE” argument has been specifically rejected by the Board. The related work doctrine is applicable only where the primary dispute is with the operator of a plant or other industrial concern which is the occupier of the premises. It is not applicable “where the primary dispute is against an independent contractor supplier of services and not the separate employer occupier of the premises to whom the services [are] supplied.” *Service Employees Local 32B-32J (Dalton Schools)*, 248 NLRB 1067 (1980). The decision in *Dalton Schools* was recently reaffirmed by the Board in *Teamsters Local 315 (Atchison Railway)*, 306 NLRB 634 (1992).

Union had picketed at the Burma Road gate itself, whereas in the instant strike, it chose not to approach the gate (where the sign indicating the reserve gate system would be visible), but instead, picketed only at the Front Street entrance to Burma Road. These actions indicate to me and I find that the Union consciously chose to ignore the reserve gate system and thus its complaints about proper notice are without merit.

Further support for the proposition that the Union never intended to comply with a reserve gate system may be found in the conversation Fillippo and McQuaide had with the picketers on October 12, and in Charging Party's Exhibit 1, which embodies the Union's strike philosophy. In the noted conversation, the Union's picket captain admitted that the Union's intent was to impact not only Levy employees, but also Heckett employees, ironworkers, and other employees. The statements of the pickets are admissible as evidence of the Union's objective in conducting the picketing and may be utilized to ascertain the true motivation for the Union's actions. *Amalgamated Meat Cutters (Iowa Beef Processors)*, 233 NLRB 839 (1977); *Carpenters Local 1622 (Robert Wood & Associates)*, 262 NLRB 1211 (1982); *Electrical Workers IBEW Local 6 (International Hotels)*, 286 NLRB 680 (1987). Inter alia, the Union's published advice to its members (C.P. Exh. 1) states: "A good union member knows he has the right not to work behind any picket line," and "knows that a two gate system means a picket line and he has the right not to work, no matter how many gates the employer sets up." As noted earlier, Connors had Charging Party's Exhibit 1 specifically distributed to Heckett employees through Dobbs on the morning of October 12. The distribution of identical information to neutral employees has been found to violate Section 8(b)(4)(B) of the Act. *Iron Workers Pacific Northwest Council (Hoffman Construction)*, 292 NLRB 562 (1989). Its distribution to Heckett's employees in connection with the strike and picketing activities is unlawful and constitutes evidence of secondary object and would make the picketing violative of Section 8(b)(4)(i) and (ii)(B) of the Act. *Iron Workers Local 433 (Barry-Wehmiller Co.)*, 303 NLRB 287 (1991).

For all the reasons set forth above, I find that Respondent's picketing at the gates reserved for neutrals violated Section 8(b)(4)(i) and (ii)(B) of the Act.

D. Do the Internal Union Charges Filed Against Heckett Employees Violate the Act?

I have heretofore found that the Respondent's picketing of the East and West Bridge gates of LTV Steel during the involved strike had as one of its purposes an unlawful second-

case where (1) there is no showing that the reserved gate system at the construction site was unreasonable, or established in bad faith, and (2) where both Congressional objectives could have been accomplished if the Respondents had picketed at the reserved primary gate on the construction site itself." In the instant case, by picketing at the Front Street entrance to Burma Road, the Union's picketing was visible to a portion of the public, that which visited the Amoco Oil facility or used Whiting Park. Picketing at this location and at the Burma Road gate itself would have effectively reached Levy, its employees, its suppliers, and all others doing business with it at the LTV Steel facility. I do not find that the reserve gate system was improperly established because the Burma Road gate was reserved for picketing. Its past usage in strike situations would also bolster such a finding.

any object, the enmeshing of at least the neutral employer Heckett with a goal of putting increased pressure on the neutral employer LTV Steel to cease doing business with Levy. I also believe that bringing internal union charges against the employees of Heckett who are Local 150 members and who crossed the illegal picket line during the strike is likewise unlawful and in violation of Section 8(b)(1)(A) and Section 8(b)(4)(i)(B) of the Act. Respondent's actions in this regard were in furtherance of the same secondary object, were therefore unlawful, and clearly restrained and coerced the involved member/employees in the exercise of their Section 7 rights. See *Longshoremen ILA Local 30 (Borax & Chemical Corp.)*, 223 NLRB 1257 (1976); *Mississippi Gulf Coast Building Trades Council (Roy C. Anderson Jr., Inc.)*, 222 NLRB 649 (1976), enf'd. 542 F.2d 573 (5th Cir. 1976).

Even assuming, arguendo, that Respondent is correct in its assertion that its picket line was lawful, I would still find that it violated the same sections of the Act by the filing of internal charges against the Heckett employees. In this regard, the Respondent relies primarily on *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967), in support of its position that it did not violate the Act by filing internal charges against the Heckett employees and threatening to fine them and take away their union cards and jobs because they violated an internal union bylaw. This reliance is misplaced. The Board has distinguished *Allis-Chalmers* and relied on *Scofield v. NLRB*, 394 U.S. 423 (1969), where the Supreme Court stated:

Section 8(b)(1)(A) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule.

The Board held in *Carpenters (J. A. Stewart Construction)*, 242 NLRB 585, 587 (1979):

We have no trouble finding that such discipline not only frustrates the policy reflected in the secondary boycott provisions of the Act, which forbids labor organizations from enmeshing neutral employers in primary labor disputes, but, as alleged, would also require a finding of unlawful secondary boycott activity. We are guided to this conclusion by Board precedent.

Therefore, Respondent's discipline of its Heckett members is not privileged by the proviso to Section 8(b)(1)(A) of the Act.¹⁶ Id. See also *Painters Local 1621 (Alameda Glass)*, 242 NLRB 1011 (1979).

The Board has found that a union violates Section 8(b)(1)(A) of the Act by imposing internal union discipline on certain employees in order to induce or encourage them to withhold their services from a neutral employer with an object of forcing or requiring the neutral employer to cease doing business with a primary employer. *Plumbers Local 444 (Hanson Plumbing)*, 277 NLRB 1231 (1985); *Carpenters*

¹⁶ The proviso to Sec. 8(b)(1)(A) states: "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."

(*Commercial Industrial Constructors*), 259 NLRB 541 (1981).

In addition, the Board has also found that a union violates Section 8(b)(4)(i)(B) of the Act by fining members who work for a neutral employer during a labor dispute involving another employer. *Electrical Workers IBEW Local 153 (Belleville Electric)*, 221 NLRB 345 (1975); *Sheet Metal Workers Local 252 (S. L. Miller)*, 166 NLRB 262 (1967). In finding a violation of Section 8(b)(1)(A) and (4)(i)(B), the Board has considered of no significance whether the picket line is lawful. *Belleville*, supra; *S. L. Miller*, supra; and *Hanson Plumbing*, supra. The Board has also held that charges brought by a union against its members for having worked behind a picket line under similar legal circumstances and the resulting fine to the member is itself in violation of Section 8(b)(1)(A) and (4)(i)(B) of the Act. *Plumbers Local 388 (Daily Heating)*, 280 NLRB 1260 (1986).

In the instant case, Connors, the Union's business representative, filed charges with Cisco, the recording secretary, against employees of Heckett who crossed Respondent's picket line and worked for Heckett during Respondent's strike against Levy. The charged members were notified of a trial scheduled for December 12, 1991, by Respondent's president, Dugan. Through its conduct, Respondent induced and encouraged the Heckett employees to cease performing work for a neutral employer.¹⁷ Such union discipline of neutral employees has the same "induce and encourage" effect on them as a picket line in front of a gate reserved for their ingress and egress and involves the same proscribed object. *J. A. Stewart*, supra. Based on the facts found and the legal precedent cited, I find that the Union violated Section 8(b)(1)(A) and (4)(i)(B) of the Act by charging the member/employees of Heckett with violations of Respondent's constitution and bylaw, irrespective of the legality of the picket line.¹⁸

¹⁷ It makes no difference that Respondent attempted to impose discipline after the strike against Levy was over. It was the act of initiating discipline during the presence of the strike which constituted unlawful inducement under Sec. 8(b)(4)(i)(B) of the Act and the unlawful restraint and coercion under Sec. 8(b)(1)(A) of the Act. The "cease doing business" language of Sec. 8(b)(4)(B) applies to both existing as well as prospective business relationships. *Commercial Industrial Constructors*, supra; *J. A. Stewart Co.*, supra; and *Alameda Glass*, supra.

¹⁸ Because the charging of the Heckett employees is not privileged by the proviso to Sec. 8(b)(1)(A), they are not required to exhaust Respondent's internal remedies. *Commercial Industrial Constructors*, supra; *Alameda Glass*, supra. It is also irrelevant whether the no-strike clause contained in Heckett's collective-bargaining agreement with Respondent contained a provision sanctioning sympathy strikes (which I have found it did not). The Board has held that whether a no-strike provision in a contract prohibits sympathy strikes is irrelevant because the issue in this type of case involves not the right of employees to engage in a sympathy strike, but the validity of a union's discipline of its members for refusing to take part in activity not countenanced by the Act and meant to enmesh neutrals in a primary dispute. *Alameda Glass*, supra.

E. Are the Bylaws Pursuant to Which Respondent Attempted to Discipline its Heckett Employee-Members Unlawful?

The principle section of the bylaws that the Heckett employees were charged with violating is that contained in article IX, section 7(i), which reads:

- (i) Work on a job where a strike is called or refuse to come off when notified by the authorized Business Representative of Officers of the Local Union.

As this provision draws no distinction between single and common situs situations or between lawful (primary) and unlawful (secondary or unprotected) strikes, it is contended that it is overly broad and can be used, as in the instant case, as authorization for unlawful activity, such as the enforcement of secondary boycotts since members are required to honor any picket line, regardless of its legality. General Counsel relies on a number of cases where the Board has found similar provisions contained in collective-bargaining agreements to be unlawful, but cites no case in which the Board has found the same or similar bylaw provision to be unlawful.

In *Painters Local 1621 (Alameda Glass)*, supra, a union violated Section 8(b)(1)(A) of the Act when it imposed internal union discipline on its members who were working for a neutral employer at a common situs where a picket line was established by another union. In *Alameda Glass*, the General Counsel only alleged that the union violated Section 8(b)(1)(A) of the Act, and did not allege a violation of Section 8(b)(4). However, where a union brings internal charges against its members for refusing to honor a picket line under the circumstances set forth in the instant case, that union violates not only Section 8(b)(1)(A), but also Section 8(b)(4)(i)(B) of the Act. *Commercial Industrial Constructors*, supra.

In *Alameda Glass*, the union maintained the following provision in its bylaws, and charged certain members with violating that provision: "Members shall not pass or work behind a picket line recognized by the Building Trades Council . . . in areas where work is being performed." Although the Board had not considered the legality of the bylaw provision, the circuit court on appeal did consider this issue and stated that by maintaining this provision, the union encouraged its members to place secondary pressure on their employer, in violation of Section 8(b)(4) of the Act. *NLRB v. Painters Local 1621 (Alameda Glass)*, 632 F.2d 89, 92 (9th Cir. 1980). The court added:

It is even clear that union discipline of members who elect to work for neutral employers impairs the policy against the application of secondary pressure. The District of Columbia Circuit has held that contractual picketline clauses protecting employees who treat neutral gates as if those gates were guarded by imaginary picket lines sanction secondary boycott activity in violation of Section 8(e) of the Act. *Bricklayers Local 2 v. NLRB*, supra, 562 F.2d at 784-86. Similarly, to allow unions to enforce an internal rule against working for a neutral employer at a construction site would be to give legal sanction to the institutionalization of the imaginary picket line by use of an ever-present threat

of union discipline, a result hardly consonant with the policies underlying Section 8(b)(4)(B).

In concluding that the union's bylaw provision violated Section 8(b)(1)(A) and (4), the court relied on Board precedent which has held overly broad contractual picket line clauses violate Section 8(e) of the Act.

Where, as here, a union publishes a guideline for its members during a strike, Charging Party's Exhibit 1, which is unlawful and encourages its members to cease working for neutral employers during a strike at a common situs, and where the union attempts to unlawfully enforce its bylaw provision to discipline its members who refused to cease work for a neutral employer during a strike against a primary employer at a common situs, I believe the General Counsel's argument that the bylaw provision in question is overly broad and would tend to coerce and induce members to engage in unlawful secondary activity is well taken. Accordingly, I find that Respondent's bylaw article IX, section 7(i), to be in violation of Section 8(b)(1)(A) and (4)(B) of the Act as that bylaw provision is presently written. Given Respondent's apparent disregard for those portions of the labor laws which do not further its immediate goals, I believe that public policy concerns override the usual Board policy of allowing unions to handle internal matters without interference, and override the proviso to Section 8(b)(1)(A) for reasons similar to those articulated by the court in *Painters Local 1621*, supra.

F. Does the Confidentiality Clause in the Union's Bylaws Violate the Act?

Respondent maintains a clause in its bylaws at article XXI, section 1, which states: "Business Confidential—All business transactions of the Local Union within the knowledge of any member shall be held inviolate, confidential and private from persons outside of the organization." During the hearing, Respondent's counsel reminded member-witness DeGoey that he had taken an oath to honor the Union's bylaws, one of which was to maintain the confidentiality of the Union's meetings. Specifically, during the hearing held May 18, 1992, DeGoey was asked the following questions by Respondent's counsel:

Q. Mr. DeGoey, you took an oath right before you testified here today, right?

A. Yes.

Q. You also took an oath when you joined the union did you not?

A. Yes.

Q. One of the things that you agreed to do when you joined the union was to honor the union's by laws, right?

A. That is right.

Q. One of the things was to maintain the confidentiality of the union meetings, right?

A. Yes.

Q. And another of those obligations is to honor union picket lines, right?

A. Yes.

General Counsel contends that the existence of the confidentiality provision is violative of the Act because it impedes access to the Board and its processes.

I cannot find that the existence of this provision has in any way impeded the Respondent's members access to the Board or in any way stifled their participation in the Board's process. I cannot find that the Union has threatened any member with discipline for availing himself or herself of the Board's processes, unless one considers the questions by Respondent's counsel in the heat of the trial to be a threat, and I do not. As no authority is cited for the position advanced by General Counsel, and as the Union may have very legitimate reasons for wanting to maintain the confidentiality of its meetings, Board proceedings aside, I will not find the maintenance of this bylaw provision to be a per se violation of the Act in the absence of any showing of actual harm it has caused in violation of public policy. This bylaw provision does not encourage unlawful action by members as did the bylaw provision discussed in the previous section of this decision.

CONCLUSIONS OF LAW

1. Harsco Corporation, Heckett Division, and LTV Steel Company, Inc. are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Union of Operating Engineers, Local 150, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By inducing and encouraging individuals employed by persons engaged in commerce, or in an industry affecting commerce; by picketing at gates reserved for neutrals, to engage in a strike or refusal in the course of their employment to use or work on any goods or materials or to perform services; and by the aforesaid picketing, threatening, coercing, and restraining persons engaged in commerce, or in an industry affecting commerce, with an object of forcing or requiring those persons to cease doing business with LTV Steel Company, Inc. and/or Harsco Corporation, Heckett Division, the Union has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B).

4. By distributing pamphlets to its members for the purpose of inducing its members who are employees of a neutral employer to cease work, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i)(B).

5. By maintaining its overly broad bylaw provision, article IX, section 7(i), which has the secondary object of coercing or encouraging members to engage in unlawful secondary activity, the Respondent has engaged in unfair labor within the meaning of Section 8(b)(4)(i)(B).

6. By preferring charges and threatening to impose discipline on its members listed in Appendix A,¹⁹ Respondent has restrained and coerced employees and otherwise engaged in conduct in violation of Sections 8(b)(1)(A) and 8(b)(4)(i)(B) of the Act.

7. The above recited unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

¹⁹ App. A is intended to list all members of Local 150 against whom charges were preferred for their activity during the involved strike. In the event a name is omitted, the omission is inadvertent and the list should be corrected to include all persons so discriminated against by Respondent.

8. The Respondent did not commit an unfair labor practice by maintaining a confidentiality provision in its bylaws as alleged.

THE REMEDY

As I have found that Respondent has engaged in conduct in violation of Section 8(b)(1)(A), (4)(i), and (ii)(B) of the Act, I recommend that Respondent be ordered to cease and desist therefrom and take the following affirmative action necessary to effectuate the policies of the Act.

Having found that Respondent unlawfully preferred charges against the member/employees listed in Appendix A, threatened them with fines and other discipline, and scheduled internal trials to impose such discipline, and further, that it was necessary for these member/employees to secure legal counsel to prevent injury resulting from such unlawful action, I recommend that Respondent be ordered to make these member/employees whole for all legal and other expenses they incurred, with interest computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I further recommend that Respondent be ordered to withdraw and remove from its records all references to the charges filed against the member/employees listed in Appendix A, cease and desist from scheduling any trials pursuant to those charges, and not use these charges to discriminate against these member/employees in any way in the future. Respondent should also be ordered to notify each of these member/employees in writing that these things have been done.

I also recommend that Respondent be ordered to rescind or clarify the provision found in its bylaws in article IX, section 7(i).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁰

ORDER

The Respondent, International Union of Operating Engineers, Local 150, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Inducing and encouraging individuals employed by persons engaged in commerce, or in an industry affecting commerce, by picketing at gates reserved for neutrals, to engage in a strike or refusal in the course of their employment to use or work on any goods or materials or to perform services, and by the aforesaid picketing, threatening, coercing, and restraining persons engaged in commerce, or in an industry affecting commerce, with an object of forcing or requiring those persons to cease doing business with LTV Steel Company, Inc. and/or Harsco Corporation, Heckett Division.

(b) Distributing pamphlets to its members for the purpose of inducing its members who are employees of a neutral employer to cease work or in any other manner disseminating the same or similar material that violates Section 8(b)(4)(i)(B) of the Act.

(c) Maintaining an overly broad bylaw provision, article IX, section 7(i), which has the secondary object of coercing or encouraging members to engage in unlawful secondary activity.

(d) Preferring charges and threatening to impose discipline on its member employees thereby restraining and coercing employees and inducing and encouraging them to withhold their services from their neutral employer.

(e) In any like or related manner restraining or coercing employees in the rights guaranteed them by Section 7 of the Act, including processing internal union charges against member/employees, and scheduling trials pursuant to those charges.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the 53 Harsco Corporation, Heckett Division employees listed in Appendix A whole for all legal and other expenses they incurred because of our unlawful discrimination against them, with interest, as directed in the remedy section of this decision.

(b) Withdraw and remove from its records all references to the charges filed against the employees listed in Appendix A, cease and desist from scheduling any trials pursuant to those charges, and not use these charges to discriminate against these member/employees in any way in the future.

(c) Notify each of these employees in writing that these things have been done.

(d) Rescind or clarify the provision found in its bylaws in article IX, section 7(i).

(e) Post at its offices and meeting halls copies of the attached notice marked "Appendix B."²¹ Copies of this notice on forms provided by the Regional Director for Region 13, after being signed by Respondent's authorized representative, shall be posted by Respondent for 60 consecutive days, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Sign and return to the Regional Director for Region 13 sufficient copies of the attached notice marked "Appendix B" for posting by Harsco Corporation, Heckett Division, and LTV Steel Company, Inc., if willing, in conspicuous places, including all places where notices to employees are customarily posted.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

²¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

Russell Goin	John Sacek
Douglas L. Pearson	John W. Ream
John Szozda	Jimmy R. Stanford
Dan Henewich	Darren King
Robert E. Motyka	Paul Janovick
King T. Robinson	Glen A. Baumgartner
Robert Watkins	Marko Roknic

²⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Gary Hegyi	Jacquelyn Warner Rollins
Bruce Caruso	William A. Lippincott
Andrew Caruso	Harland Ronk, Jr.
William P. Convery	Stephen Postlethwait
Michael W. Simac	Joe C. Goss
Mathew J. Preshiren	David R. Wallen
William J. DeGoey	Raymond J. Williams
Ted Rajzer	David H. Farmer
Joseph J. Dybowski	Leo W. McDaniel
Randall L. Dobbs	William S. Callahan
Terry D. Sherer	Gerald S. Ziants
Lonny J. Shifley	Timothy Scheub
James W. Brady	Henry U. Rail
Phillip Kiger	Frank T. Wolotka
George Pezan	Anthony J. Chmielewski
Wilbur Ray Benson	Vernardo C. Morris
Robert L. Howisen	Glen E. Williams
Ivan Pustik	Wayne Groskopf
Albert S. Alonzo	Charles Kincade
Edgar Walker	

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT induce and encourage individuals employed by persons engaged in commerce, or in an industry affecting commerce, by picketing at gates reserved for neutrals, to engage in a strike or refusal in the course of their employment to use or work on any goods or materials or to perform services, and by the aforesaid picketing, threatening, coercing, and restraining of persons engaged in commerce, or in an in-

dustry affecting commerce, with an object of forcing or requiring those persons to cease doing business with LTV Steel Company, Inc. and/or Harsco Corporation, Heckett Division.

WE WILL NOT distribute pamphlets to our members for the purpose of inducing our members who are employees of a neutral employer to cease work or in any other manner disseminate the same or similar material.

WE WILL NOT continue to maintain our overly broad bylaw provision, article IX, section 7(i), which has the secondary object of coercing or encouraging members to engage in unlawful secondary activity.

WE WILL NOT prefer charges and threaten to impose discipline on our members, thereby restraining and coercing them and inducing and encouraging them to withhold their services from their neutral employer.

WE WILL NOT in any like or related manner restrain or coerce our members in the rights guaranteed them by Section 7 of the Act, including processing internal union charges against them, and scheduling trials pursuant to those charges.

WE WILL make whole the 53 Harsco Corporation, Heckett Division employees against whom we filed charges and threatened with discipline for all legal and other expenses they incurred because of our unlawful discrimination against them, with interest.

WE WILL withdraw and remove from our records all references to the charges filed against these 53 members, cease and desist from scheduling any trials pursuant to those charges, and not use these charges to discriminate against these members in any way in the future.

WE WILL notify each of these members in writing that these things have been done.

WE WILL rescind or clarify the provision found in our bylaws in article IX, section 7(i) to ensure that it does not promote an unlawful object.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO